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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D C 20554

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OCT 31 2002

In the Matter of)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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)
Amendment of Section 11.11(a) of the)
Commission's Rules To Permit Use of)
"Force Tune" Technology by Digital)
Wireless Cable Systems)
)

RM - _____

PETITION FOR RULEMAKING

The Wireless Communications Association International Inc. ("WCA"), by its counsel and pursuant to Section 1.401 of the Commission's Rules, hereby requests that the Commission issue a *Notice of Proposed Rulemaking* to amend Section 11.11(a) of its rules to permit digital wireless cable systems with 5,000 or more subscribers to have the option of delivering Emergency Alert System ("EAS") messages via "force tune" technology in lieu of carrying video and audio EAS messages on every programmed channel (the latter referred to herein as the "all channels" requirement). For the reasons set forth below, the proposed rule amendment is consistent with the spirit and intent of the Commission's EAS rules and is necessary to alleviate the financial burden full compliance with the "all channels" rule imposes on digital wireless cable systems.¹

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¹ WCA is the trade association of the wireless broadband industry. Its members include, among others, wireless cable operators who utilize licensed and/or leased Multipoint Distribution Service ("MDS") and Instructional Television Fixed Service ("ITFS") spectrum in the 2.1 and 2.5 GHz bands to deliver multichannel video and broadband services to residential and business subscribers. WCA was an active participant in the rulemaking proceeding in which the Commission applied its EAS rules to wireless cable. See *Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System*, 12 FCC Rcd 15503 (1997) (the "EAS Second R&O"). Accordingly, WCA has a direct and immediate interest in the Commission's resolution of the issues raised in this petition.

WCA has filed this petition in response to the Enforcement Bureau's recent decision to grant digital wireless cable operator W.A.T.C.H. TV a temporary waiver of Section 11.11(a).² As discussed in greater detail below, W.A.T.C.H. TV submitted undisputed record evidence that full compliance with Section 11.11(a)'s "all channels" requirement would have imposed insurmountable costs on W.A.T.C.H. TV's digital wireless cable system, and that the use of "force tune" technology (a software-based solution that automatically tunes the viewer's television set to a predesignated EAS channel) was the best solution available short of a permanent waiver of Section 11.11(a).³ The Enforcement Bureau concluded that a formal rulemaking on the "force tune" issue would be necessary, and thus granted W.A.T.C.H. TV a limited 30-day waiver of Section 11.11(a) that would be automatically extended upon the filing of a petition for rulemaking requesting an amendment of the rule to permit W.A.T.C.H. TV's force tune solution.⁴

To review, W.A.T.C.H. TV. provides wireless cable service to approximately 11,000 subscribers in rural communities in western Ohio, particularly the area in and around the cities of Lima, Wapakoneta, Celina, Ottawa, St. Mary's, Ada, Bluffton, Van Wert and Bellafontaine. Last year, the company began upgrading its analog video system to accommodate digital video and two-way high-speed Internet access, an effort that required enormous time and expense. All of the company's subscribers have been converted to digital, and the company now offers 178

² *W.A.T.C.H. TV and Benton Ridge Telephone Co.*, File No. EB-02-TS-510, DA 02-2398 (Enforcement Bureau, rel. Sept. 27, 2002) (the "*W.A.T.C.H. TV Order*").

³ See Letter from Kohert D. Primosch, Esq. to Joseph P. Casey, Chief, Technical and Public Safety Division, Enforcement Bureau, Federal Communications Commission. File No. EB-02-TS-510 (Sept. 9, 2002).

⁴ *W.A.T.C.H. TV Order* at ¶ 5. As a result of the filing of this petition, W.A.T.C.H. TV's waiver has been extended until either the effective date of any changes adopted by the Commission to the EAS rules for digital wireless cable systems, or 90 days after the Commission issues a decision declining to adopt any such changes. *Id*

channels of digital video programming (including local broadcast signals). Of those 178 channels, 50 are received in analog video/audio format and converted at W.A.T.C.H. TV's headend to digital feeds. The remaining 128 channels are taken directly from satellite feeds and remain in a digital format.

After consulting with three separate equipment vendors, W.A.T.C.H. TV determined that the EAS equipment currently available for wireless cable systems will only work in the analog environment on a channel by channel basis. While this solution would be feasible for W.A.T.C.H. TV's 50 locally encoded programs (*i.e.*, via bypassing the locally encoded program and connecting individual encoders to the EAS source), it is impractical for the 128 remaining digital channels that are taken directly from satellite feeds. This is because W.A.T.C.H. TV cannot interrupt the digital channels unless it has equipment that can separate the digital feeds into individual program streams, convert each program stream to analog format, insert the EAS video/audio into each program stream, re-encode program stream to digital format, and then recombine all of these streams into multiplexes for retransmission to subscribers. The cost of the equipment necessary to accomplish this is as follows:

EAS equipment	\$ 6,500.00
128 satellite receivers	\$ 151,250.00
128 analog to digital encoders	\$1,210,000.00
14 statistical multiplexers	\$ 476,000.00
9 equipment racks (including AC power and cables)	\$ 4,500.00
Total	\$1,848,250.00

The costs described above will be insurmountable given W.A.T.C.H. TV's limited resources (much of which have been devoted to upgrading its system for digital video and high-speed Internet service), its competitive position vis-a-vis incumbent cable operators and current economic conditions generally. Indeed, the costs described above would amount to nearly one-third of the company's projected gross revenue for 2002 (\$5,700,000). Even without these additional costs, W.A.T.C.H. TV projects that it will suffer a net loss this year of approximately \$126,000, on top of its net loss of \$494,814 in 2001. Simply put, the company's ability to deliver competitive multichannel video and broadband service to its subscribers would be seriously compromised if W.A.T.C.H. TV were forced to bear the costs described above.

Accordingly, prior to the October 1, 2002 EAS compliance deadline for wireless cable systems, W.A.T.C.H. TV worked diligently with its set-top box vendors to devise a more feasible EAS mechanism that will ensure that W.A.T.C.H. TV's subscribers are fully apprised of all pending emergencies, as required under the Commission's EAS rules. Those efforts yielded a viable "force tune" solution that is software-based (and thus far less costly) and effectively guarantees that W.A.T.C.H. TV's subscribers will be automatically tuned to EAS messages as they occur. Under the "force tune" configuration, the video/audio output of the EAS equipment will be connected to W.A.T.C.H. TV's encoder for channel 1 (as a result, channel 1 becomes the channel where all EAS messages are carried on the system). The EAS equipment sends a trigger message to the conditional access system ("CAS") at W.A.T.C.H. TV's headend, which then forwards the trigger to the subscriber's set-top box as part of the control data included in every multiplexed program stream transmitted by the system. The software in the set-top box recognizes the trigger and "force tunes" the set-top box to channel 1, where the EAS message is displayed/announced.

The costs of implementing this “force tune” configuration are as follows:

EAS Equipment	\$ 6,500.00
Software Development for the Set-Top Box	\$20,000.00
Software Development for the CAS	\$19,500.00
Total	\$46,000.00

The savings, obviously, are dramatic – implementation of the “force tune” solution saves W.A.T.C.H. TV \$1,802,250.00, *i.e.*, nearly 98% less than solution required for full compliance with the Commission’s requirement that EAS video and audio messages be available on every programmed channel. Moreover, since the viewer in all cases is automatically tuned to the system’s pre-designated **EAS** channel, immediate notification of emergency situations is guaranteed, and thus the Commission’s overriding objective of “provid[ing] emergency alerts to receivers of video programming” is satisfied.⁵

The Commission has consistently crafted its EAS rules to avoid imposing undue hardship on alternative multichannel video programming distributors that do not have the same resources as the highly consolidated wired cable operators with whom they compete.⁶ That policy should

⁵ *Amendment of Part 73, Subpart G, of the Commission’s Rules Regarding the Emergency Broadcast System*, 12 FCC Rcd 15503, 15522 (1997) (the “*EAS Second Report and Order*”). It should be noted that the software utilized by W.A.T.C.H. TV can be configured to permit a “force tuned” viewer to switch back to the channel he or she was viewing – the viewer thus is not forced to continue watching the predesignated **CAS** channel if he or she chooses not to do so.

⁶ For example, the Commission does not impose EAS obligations on Open Video Systems (“OVS”) or satellite master antenna television systems (“SMATV”). *EAS Second Report and Order*, 12 FCC Rcd at 15523-5. Interestingly, EAS participation also remains optional for DBS, whose market penetration is far greater than that of wireless cable. *Amendment of Part 73, Subpart G, of the Commission’s Rules Regarding the Emergency Broadcast System*, 10 FCC Rcd 1786 (1994); see also *Amendment of Part 11 of the Commission’s Rules Regarding the Emergency Alert System*, 17 FCC 4055, 4082 (2002) (permitting

apply with equal force here, particularly given the devastating financial impact full compliance with the “all channels” requirement will impose on W.A.T.C.H. TV and others **like** it. The Commission has recognized that the digitization of wireless cable systems advances Congress’s goal of “promot[ing] competition . . . in order to secure lower prices and higher quality services for American telecommunications consumers.”⁷ In view of the Commission’s recent confirmation that incumbent cable operators still dominate the multichannel video marketplace,⁸ consumers plainly would be disserved by any enforcement of the EAS rules that stops terrestrially-based competition to cable in its tracks.” And, of course, any FCC action which impedes the digitization of wireless cable systems necessarily prevents W.A.T.C.H. TV and other similarly situated entities from taking full advantage of the Commission’s decision to permit wireless cable operators to deploy their spectrum for advanced two-way broadband

small wireless cable operators to use FCC-certified decoders rather than encoder/decoder units, citing cost factors).

⁷ *Request for Declaratory Ruling on the Use of Digital Modulation by Multipoint Distribution Service and Instructional Fixed Service Stations*, 11 FCC Rcd 18839, 18840 (1996), *quoting* Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁸ *See Implementation of the Cable Television Consumer Protection and Competition Act of 1992; Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act; Sunset of Exclusive Contract Prohibition*, CS Docket No. 01-290, FCC 02-176, at ¶ 4 (“Cable operators today continue to dominate the MVPD marketplace and . . . horizontal consolidation and clustering combined with affiliation with regional programming have contributed to cable’s overall market dominance.”).

⁹ *See, e.g., “The Effect of Competition From Satellite Providers on Cable Rates,”* Report to Congressional Requesters (GAO/RCED-00-164), United States General Accounting Office, at 7 (July 2000) (“The presence of a nonsatellite competitor – such as another cable company or a wireless cable operator – was associated with lower cable rates. In particular, we found that when such a competitor was operating in part or all of a franchise area, cable rates were, on average, 10 percent lower than in franchise areas with no ground-based competitors.”).

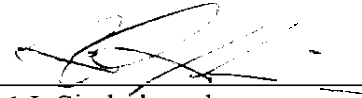
systems, which again would not serve the best interests of consumers or the Commission's broader policy of encouraging flexible use of wireless spectrum.”

In sum, WCA believes there is sufficient justification for the Commission to initiate a rulemaking on this matter and ultimately amend Section 11.11(a) as requested herein.” WCA respectfully urges the Commission to do so expeditiously to eliminate any further uncertainty about the issue both within the wireless cable industry and the vendor community

Respectfully submitted,

THE WIRELESS COMMUNICATIONS
ASSOCIATION INTERNATIONAL, INC.

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¹¹¹ See Amendment of **Paris 21 and 74** to Enable Multipoint Distribution Service **And** Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions, 13 FCC Red 19112 (1998) (subsequent history omitted).

¹¹ WCA recommends that this be accomplished simply by adding the following footnote to the chart labeled “Wireless Cable Systems (MDSIMMDSITTFS Stations)”, after the category in the left-hand column titled “Audio and Video **EAS** Message on all channels”: “Digital wireless cable systems with 5,000 or more subscribers may comply with this requirement by using a “force tune” mechanism on all programmed channels which automatically tunes the viewer’s television set to a predesignated channel which carries the required audio and video **EAS** messages.”

DECLARATION

I, **Mike Birkemeier**, Chief Engineer of W.A.T.C.H. TV, hereby declare under penalty of perjury that the facts set forth in *the* foregoing Petition for Rulemaking are true to the best of my knowledge, information and belief.

10-31-02
Date

Mike Birkemeier
Mike Birkemeier

CERTIFICATE OF SERVICE

I, Felicia Lane, a legal secretary at Wilkinson Barker Knauer, LLP certify that on October 31st, 2002, the "Petition For Rulemaking" was served on the parties listed below by hand delivery

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